STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED June 15, 2010
v	No. 290026 Kalamazoo Circuit Court
RICKY ALLEN NORTON, Defendant-Appellant.	LC No. 2008-001426-FH

Before: OWENS, P.J., and O'CONNELL and TALBOT, JJ.

PER CURIAM.

After a jury trial, defendant was convicted of one count of owning or possessing a chemical that is used in the manufacture of a controlled substance, MCL 333.7401c(2)(f), and one count of possessing a controlled substance, MCL 333.7403(2)(b)(*i*). Defendant was sentenced as a fourth habitual offender, MCL 769.12, to serve concurrent terms of 84 to 480 months' imprisonment for the manufacture of a controlled substance conviction and of 3 to 20 years' imprisonment for the possession of a controlled substance conviction. Both sentences were imposed consecutive to the time defendant was serving for a previous conviction. Defendant appeals as of right. We affirm.

Defendant first argues that he was denied the effective assistance of counsel. This assertion of error is predicated on defense counsel's alleged unreasonable failure to object to alleged improper expert testimony by two police witnesses, and on counsel's failure to request an instruction on the statutory definition of "manufacture." In order to prevail on a claim of ineffective assistance of counsel, defendant must show that "counsel's performance fell below an objective standard of reasonableness under prevailing professional norms," and that there is "a reasonable probability that, but for counsel's error, the result of the proceedings would have been different, *and* the attendant proceedings were fundamentally unfair or unreliable." *People v Rodgers*, 248 Mich App 702, 714; 645 NW2d 294 (2001) (emphasis in original). "[T]he defendant must overcome a strong presumption that counsel's performance constituted sound trial strategy." *People v Carbin*, 463 Mich 590, 600; 623 NW2d 884 (2001).

Defendant claims that his counsel should have objected to statements that a police officer made at trial when explaining why he found the possession of multiple boxes of pseudoephedrine suspicious:

Q. Why is that suspicious?

A. [M]ultiple boxes of pseudoephedrine, if in possession, is against the law. Due to the fact the manufacturing of methamphetamine, a person can only possess—can only purchase two boxes of pseudoephedrine at a time and cannot possess more than two.

Q. What's the main ingredient of methamphetamine?

A. It's the pseudoephedrine.

Defendant also asserts that an objection should have been raised to the following exchange between the prosecutor and another officer:

Q. Now are there limits on how much pseudoephedrine someone can purchase in a day or a week or in a month?

A. Federal law stipulates the amount that can be purchased, and the federal law stated or is dictated as within a day you can purchase no more than 3.6 grams.

Q. What about a week?

A. Within a week, 3.6 grams.

This officer also indicated that defendant had purchased either 11 or 12 grams of pseudoephedrine within a month, thus violating the federal law governing such purchases.

Defendant claims that his counsel should have objected to this testimony because it constituted improper "presentation of 'expert' testimony concerning the law." Assuming without deciding that the two officers were expert witnesses on the law by virtue of their training, experience, or education, MRE 702, defendant is correct that experts may not testify regarding the applicable law, because this is a matter left to the province of the trial court. See *Thorin v Bloomfield Hills Bd of Ed*, 203 Mich App 692, 704; 513 NW2d 230 (1994). However, defendant was not charged with violating MCL 333.17766c(1), which provides that a person may not possess more than 12 grams of ephedrine or pseudoephedrine alone or in a mixture. Defense counsel noted in his opening and closing remarks that such a charge was not before the jury. In addition, the trial court clearly instructed the jury that defendant was charged with the crime of possessing a chemical for the purpose of manufacturing methamphetamine, not that defendant had violated the statute regulating the amount of pseudoephedrine a person is allowed to possess. Thus, the testimony provided did not invade the court's "exclusive responsibility . . . to find and interpret the applicable law." *Id.*

Further, defense counsel could have reasonably determined that challenging this line of questioning was not in the best interest of his client. Counsel knew that the court would instruct the jury on the crimes charged, and he could have decided that interposing himself at this point would make defendant look obstructionist. Thus, defendant fails to overcome the presumption that counsel's actions constituted sound trial strategy. *Carbin*, 463 Mich at 600.

Defendant next claims that he was prejudiced by his counsel's failure to request a jury instruction on the statutory definition of "manufacture." The trial court instructed the jury that

one of the elements of the crime of possessing a chemical for purposes of manufacturing methamphetamine was that defendant "knew or had reason to know that the chemical or laboratory equipment was intended to be used for the purpose of manufacturing methamphetamine." Defendant notes that pursuant to MCL 333.7401c(7)(c), "'[m]anufacture' means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis." Defendant argues that by failing to give the jury the definition contained in the statute, the jury was forced to substitute an alternate meaning for the word, which was probably something akin to "produce."

As the trial court noted in denying defendant's motion for a new trial on this issue, defendant was not charged with manufacturing methamphetamine; rather, defendant was charged with possessing a substance used to manufacture methamphetamine. Thus, the jury needed to know only that pseudoephedrine was used in manufacturing methamphetamine and that defendant knew or had reason to know that it was going to be used for that purpose. MCL 333.7401c(1)(b). Because defendant fails to show that the statutory definition of manufacture should have been given, trial counsel cannot be deemed ineffective. *People v Fike*, 228 Mich App 178, 182; 577 NW2d 903 (1998) ("[T]rial counsel cannot be faulted for failing to raise an objection or motion that would have been futile.").

Finally, defendant argues that MCL 769.11b entitles him to receive jail credit against his sentence in the instant case for time served while awaiting sentencing. However, defendant's argument has been rejected by our Supreme Court. *People v Idziak*, 484 Mich 549, 562-563, 566-567; 773 NW2d 616 (2009).

Affirmed.

/s/ Donald S. Owens
/s/ Peter D. O'Connell
/s/ Michael J. Talbot